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8 UNITED STATES DISTRICT COURT
9 DISTRICT OF NEVADA

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11 ABDUL HOWARD,

12 Petitioner,

13 v.

14 ATTORNEY GENERAL OF THE STATE
15 OF NEVADA, et al.,

16 Respondents.

Case No. 2:12-cv-01613-MMD-PAL

ORDER

17 The petitioner, who is not in custody, presented the Court with a petition for writ
18 of habeas corpus pursuant to 28 U.S.C. § 2254 and an application to proceed *in forma*
19 *pauperis*. The *in forma pauperis* application was granted, but the petition was
20 dismissed because the petitioner was not in custody at the time his federal petition was
21 filed. See Order of October 23, 2012 (dkt. no. 2). Petitioner now seeks reconsideration
22 of that order (dkt no. 6), arguing that because he was in custody at the time he filed his
23 appeal to the Nevada Supreme Court the federal petition should be reviewed. He
24 further argues that the state court proceedings took significantly longer than normal,
25 delaying his attempts to obtain relief. He claims this delay was intentional “because [the
26 opposing parties] new [sic] that petitioner was soon to be released from prison and new
27 [sic]” that petitioner could “persue [sic] further this miscarriage of justice done to
28 [petitioner].” However, this delay allegation is not pertinent to the Court’s Order.

1 Although not mentioned in the Federal Rules of Civil Procedure, motions for
2 reconsideration may be brought under Rules 59(e) and 60(b). Rule 59(e) provides that
3 any motion to alter or amend a judgment shall be filed no later than 28 days after entry
4 of the judgment. The Ninth Circuit has held that a Rule 59(e) motion for reconsideration
5 should not be granted “absent highly unusual circumstances, unless the district court is
6 presented with newly discovered evidence, committed clear error, or if there is an
7 intervening change in the controlling law.” *Marlyn Nutraceuticals, Inc. v. Mucos Pharma*
8 *GmbH & Co.*, 571 F.3d 873, 880 (9th Cir. 2009) (quoting *389 Orange Street Partners v.*
9 *Arnold*, 179 F.3d 656, 665 (9th Cir. 1999)). Under Rule 60(b), a court may relieve a
10 party from a final judgment, order or proceeding only in the following circumstances: (1)
11 mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence;
12 (3) fraud; (4) the judgment is void; (5) the judgment has been satisfied; or (6) any other
13 reason justifying relief from the judgment. *Stewart v. Dupnik*, 243 F.3d 549, 549 (9th
14 Cir. 2000); see also *De Saracho v. Custom Food Mach., Inc.*, 206 F.3d 874, 880 (9th
15 Cir. 2000) (noting that the district court’s denial of a Rule 60(b) motion is reviewed for an
16 abuse of discretion).

17 Petitioner’s motion fails to satisfy the requirements of either Rule 59 or 60.
18 Petitioner seeks reconsideration based on his claim that his attempts to obtain relief
19 were obstructed by intentional delays in the proceedings in state court. However, the
20 reason why plaintiff did not file his petition while he was in custody is of no import. What
21 is material is the fact that plaintiff was not in custody at the time the habeas petitioner
22 was filed. Because plaintiff cannot satisfy the custody requirement, no relief can be
23 obtained here. See *Scanio v. U.S.*, 37 F.3d 858, 860-61 (2d Cir. 1994) (the custody
24 requirement is strictly enforced).

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1 IT IS THEREFORE ORDERED that petitioner's motion for reconsideration (dkt
2 no. 6) is DENIED. No further documents will be accepted for filing except a proper
3 notice of appeal.

4 DATED THIS 17th day of June 2013.

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8 MIRANDA M. DU
9 UNITED STATES DISTRICT JUDGE
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